

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 7

DANE COUNTY

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STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04 CV 1709

ABBOTT LABORATORIES, INC., et al,

Defendants.

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PLAINTIFF'S SUPPLEMENTAL RESPONSE TO  
DEFENDANTS' THIRD SET OF INTERROGATORIES

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The Plaintiff previously responded to the Defendants' Third Set of Interrogatories. The Defendants' third set asked a series of questions presumably intended to explore the parameters of the State's alleged *Parens Patriae* claim. The Plaintiff responded and clearly and repeatedly disavowed any claim that it was asserting a *Parens Patriae* claim or that there were any "*Parens Patriae* plaintiffs" in the pending case.

The parties subsequently discussed the State's response. In particular, the parties discussed the nuances of the *Parens Patriae* doctrine. As a result of these conversations, the Plaintiff agreed to reinterpret the previously asked questions as inquiring about the State of Wisconsin's statutory entitlement to seek restitution or seek such other amount that is reasonably necessary to remedy the harmful effects of Defendants' violation of state law.

Pursuant to the Wisconsin Rules of Civil Procedure, the State of Wisconsin, by and through its undersigned counsel, respond again to "Defendants' Third Set of Interrogatories" as follows with the aforementioned instructions applied:

### **INTERROGATORY NO. 1**

Are you seeking restitution?

### **ANSWER TO INTERROGATORY NO. 1**

The Plaintiff reserves its right to seek restitution and/or seek an amount reasonably necessary to remedy the harmful effects of Defendants' violation of state law as explicitly allowed in § 49.49(6) and § 100.263.

### **INTERROGATORY NO. 2**

If the answer to Interrogatory No. 1 is "No," state the basis on which you are asserting claims on behalf of the *Parens Patriae* Plaintiffs?

### **ANSWER TO INTERROGATORY NO. 2**

N/A.

### **INTERROGATORY NO. 3**

Do you contend that the restitution that you are seeking is limited to the following: (1) Wisconsin Part B participants who allegedly paid higher co-pays for their prescription drugs as a result of Defendants' alleged conduct and (2) private payers who were harmed by entering into contracts with PBMs based on inflated prices as alleged in Paragraph 75 of your Complaint?

### **ANSWER TO INTERROGATORY NO. 3**

No.

### **INTERROGATORY NO. 4**

If your response to Interrogatory No. 3 is anything other than an unqualified "Yes", state and define the other categories of claims brought on behalf of the *Parens Patriae* Plaintiffs.

### **ANSWER TO INTERROGATORY NO. 4**

The Plaintiff seeks restitution on behalf of itself and for Wisconsin Medicare Part B participants. Further discovery may also reveal that additional amounts or remedies that are necessary to fully remedy the harmful effect of Defendants' violation of state law.

### **INTERROGATORY NO. 5**

Please define with precision the parties on behalf you are seeking restitution, including but not limited to whether they include:

- (a) private payers within Wisconsin who pay or reimburse for Subject Drugs outside Wisconsin;
- (b) only Wisconsin residents;
- (c) non-Wisconsin residents who purchase Subject Drugs from a Wisconsin pharmacy.

#### **ANSWER TO INTERROGATORY NO. 5**

Generally see answer to interrogatory number 4 above. The Plaintiff has not at this time identified to whom restitution may be due other than to the State of Wisconsin and the federal government. In answer to the questions above, the Plaintiff does not seek restitution for non-Wisconsin residents who purchased Defendants' drugs from a Wisconsin pharmacy. The Plaintiff does not seek restitution for private payers other than for persons who paid any part of their Medicare Part B co-payment.

#### **INTERROGATORY NO. 6**

Please describe with particularity how the Plaintiff will prove that these third-parties are entitled to restitution, including how it plans to identify these third-parties, how it plans to identify the Subject Drugs paid for by these third-parties, how it plans to identify the amounts these third-parties paid for each subject drug, how it plans to identify/quantify the restitution owed these third-parties, and how it plans to show reliance by these third-parties.

#### **ANSWER TO INTERROGATORY NO. 6**

See answer to interrogatory number 5 above. Other persons who may be entitled to restitution are persons who overpaid for prescription drugs as a result of Defendants' conduct as alleged in the second amended complaint. The AWP for these transactions will be identified and calculated in the same manner as it is for the State Medicaid program, that is, by relying on the one or more pricing compendiums. The amount these persons paid may be derived from the records that these persons have generated or kept, including the identification of what prescription drugs these persons may have acquired. The amount due to these persons is the difference between what they paid as a result of Defendants' false AWPs and what they should have paid had the Defendants accurately and honestly and lawfully reported true wholesale prices. The State reserves the right to calculate restitution by other means if necessary or request the court to fashion such other remedy as may be necessary to fully remedy the harmful effect of Defendants' violation of state law.

#### **INTERROGATORY NO. 7**

Please identify the individuals or entities who you plan to have testify at trial on behalf of persons entitled to restitution.

**ANSWER TO INTERROGATORY NO. 7**

Plaintiff OBJECTS to this interrogatory on the ground that at this point it requires the disclosure of attorney work product. Disclosure will be made pursuant to the court's order requiring disclosure of lay and expert witnesses. Notwithstanding this objection, no decision has been made as to who will testify at trial.

**INTERROGATORY NO. 8**

Please identify the ten largest persons (in terms of alleged damages/pecuniary loss) for each Subject Drug.

**ANSWER TO INTERROGATORY NO. 8**

See answer to interrogatory number five above.

**INTERROGATORY NO. 9**

Do you plan on providing notice to the person entitled to restitution of the opportunity to not receive restitution, and if so, how?

**ANSWER TO INTERROGATORY NO. 9**

No decision has been made regarding the method by which the restitution, if any, is to be distributed to entities other than the State of Wisconsin or to the federal government.

**INTERROGATORY NO. 10**

Please identify all PBMs that were "enabled and encouraged" to enter into contracts with private payers based on "inflated prices" as alleged in Paragraph 75 of the Complaint.

**ANSWER TO INTERROGATORY NO. 10**

See Plaintiff's original answer to this question.

**INTERROGATORY NO. 11**

Please identify all persons currently or formerly employed by or serving as a contractor for you with any knowledge of, responsibility for, involvement in, or influence on your claim, as alleged in Paragraph No. 66 of your First Amended Complaint, that Medicare Part B participants paid substantially more for their co-pays because of Defendants' alleged conduct.

**ANSWER TO INTERROGATORY NO. 11**

See Plaintiff's original answer to this question.

### **INTERROGATORY NO. 12**

Please identify all persons currently or formerly employed by or serving as a contractor for you with any knowledge of, responsibility for, involvement in, or influence on your claim, as alleged in Paragraph 67 of your First Amended Complaint, that private payers have been harmed by entering into contracts with PBMs at “inflated prices.”

### **ANSWER TO INTERROGATORY NO. 12**

See Plaintiff’s original answer to this question.

### **INTERROGATORY NO. 13**

If, in response to Interrogatory Nos. 3 and 4, you contend there are additional categories of claims brought on behalf of persons entitled to restitution, please identify all persons currently or formerly employed by or serving as a contractor for you with any knowledge of, responsibility for, involvement in, or influence on those claims.

### **ANSWER TO INTERROGATORY NO. 13**

The Plaintiff OBJECTS to this question as it is now being interpreted in this supplemental response on the ground that it is vague and ambiguous. The “claims” the Plaintiff alleges are contained in the Plaintiff’s amended complaint.

### **INTERROGATORY NO. 14**

Please identify the Wisconsin private payers on whose behalf the State seeks restitution or damages. For each private payer identified, state:

- (a) the current and any prior methodology used by such payer to reimburse any portion of the cost of covered prescription drugs dispensed by pharmacists;
- (b) the current and any prior methodology used by such payer to reimburse any portion of the cost of physician-administered drugs;
- (c) the dates each methodology identified in answer to subparts (a) and (b) were in effect; and
- (d) the reasons for any change in the reimbursement methodologies.

### **ANSWER TO INTERROGATORY NO. 14**

As indicated in its second amended complaint, the Plaintiff no longer seeks restitution for anyone other than those persons identified in paragraph four above.

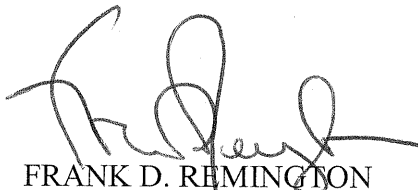
**INTERROGATORY NO. 15**

If you recover restitution, will you distribute those funds to the individuals and/or entities on whose behalf you make those claims? If so, how will you do it? If not, then to what uses will the State put the funds you recover?

**ANSWER TO INTERROGATORY NO. 15**

No decision has been made regarding the distribution of these funds if sought or if awarded.

Dated this 27<sup>th</sup> day of June, 2006.



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